

**NOTICE OF PROPOSED RULEMAKING  
PROPOSED REGULATIONS GOVERNING MARINE OIL TERMINALS**

**TITLE 2. ADMINISTRATION  
DIVISION 3. STATE PROPERTY OPERATIONS  
CHAPTER 1. STATE LANDS COMMISSION  
ARTICLE 5.1. MARINE TERMINAL PHYSICAL SECURITY**

The California State Lands Commission ("the Commission") proposes to adopt the regulations described below after considering all comments, objections or recommendations regarding the proposed action.

**PROPOSED REGULATORY ACTION**

The Commission proposes to adopt new regulations under Article 5.1, comprised of Sections 2430 through 2445, to Title 2, Division 3, Chapter 1 of the California Code of Regulations (CCR). These sections pertain to marine terminals, defined in Public Resources Code (P.R.C.) Section 8750, as facilities used for transferring oil and liquid petroleum products to and from tank vessels and barges. The proposed regulations would specify Commission requirements for a physical security program which will ensure the best achievable protection of public health and safety and of the environment.

**PUBLIC HEARING**

The Commission Staff will hold a public hearing at 10.00 AM on October 22, 2002 at the Commissioner's Board Room, Port of Long Beach, 925 Harbor Plaza, Long Beach, California 90801. This location is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing, relevant to the proposed regulatory action described in the Informative Digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony at the hearing they attend.

**WRITTEN COMMENT PERIOD**

Any interested person or his or her authorized representative may submit written comments relevant to the proposed regulatory action to the Commission. The written comment period closes at 5.00 PM on October 22, 2002. All written comments must be received at the Commission by that time. Written comments should be submitted to:

California State Lands Commission  
Marine Facilities Division  
200 Oceangate, Suite 900  
Long Beach, CA 90802-4335  
Attention: Livin Prabhu

Written comments may also be submitted by facsimile to (562) 499-6317, attention Livin Prabhu or by e-mail to "prabhul@slc.ca.gov"

## **AUTHORITY AND REFERENCE**

P.R.C. Section 8756 directs the Commission to periodically review and accordingly modify its rules, regulations, guidelines and commission leasing policies to ensure that all operators of marine terminals within the state and marine facilities under the Commission's jurisdiction always provide the best achievable protection of the public health and safety and the environment. Accordingly, the proposed regulations would clarify regulations that were implemented pursuant to P.R.C. Sections 8750 through 8760, relating to oil spill prevention at marine terminals and the best achievable protection of public health and safety and the environment.

## **INFORMATIVE DIGEST**

P.R.C. Section 8755 requires the Commission to adopt rules, regulations and guidelines, and leasing policies for reviewing the location, type, character, performance standards, size and operation of all existing and proposed marine terminals within the state, whether or not on lands leased from the Commission. P.R.C. Section 8751 makes it clear that these regulations apply to all terminals within the state, not merely those on lands under lease from the Commission. P.R.C. Section 8756 requires that the regulations be periodically reviewed and accordingly modified to ensure that all terminal operators provide the best achievable protection of the public health and safety, and the environment. P.R.C. Section 8757 directs the Commission to inspect or cause to be inspected, on a regular basis, all marine terminals, along with associated equipment, and to monitor their operations and effects on public health, safety, and the environment. Other statutory provisions governing contingency planning and other safety measures for terminals are found in other parts of the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act of 1990, under Chapter 7.4 of Title 2, Division 1 of the Government Code (Gov. C.).

As an initial measure, to ensure that all marine terminals were in a state of organized readiness to prevent and deter terrorist activity after the tragic events of September 11, 2001, the Commission adopted interim emergency regulations. These regulations required terminal operators to modify and update their safety standards and requirements by conducting a comprehensive physical security survey, preparing a terminal specific security plan, and designating a Marine Oil Terminal Security Officer. These regulations, the first of their kind in California, became effective May 7, 2001.

The Commission is now proposing a new Article 5.1, "Marine Terminal Physical Security", under Title 2, Division 3, Chapter 1, Article 5 of the CCR, consisting of

Sections 2430 through 2445. The intent of Article 5.1 is to establish and ensure that a more comprehensive physical security program is implemented and maintained to prevent or deter acts of terrorism against the terminals and to protect the public health and safety and the environment. As a permanent measure, these regulations would supercede previous emergency regulations under Title 2, Division 3, Chapter 1, Article 5 Section 2351 that initially became effective on May 7, 2002 for a period of 120 days, and were readopted to extend their validity till October 26, 2002.

1. §2430 specifies that the California State Lands Commission has the primary responsibility for carrying out the provisions of the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act of 1990 within the Commission's jurisdiction.
2. §2431 would establish the purpose of these regulations. It would also specifies the section of industry to which they apply.
3. §2432 would provide definitions and acronyms applicable to certain terms used in the regulations.
4. §2433 would establish the minimum requirements for a marine terminal security program.
5. § 2434 would require designation of a marine terminal security officer (MTSO) and alternates.
6. §2435 would establish the responsibilities of the marine terminal security officer (MTSO).
7. § 2436 would establish the requirements for a marine terminal physical security plan by specifying the minimum contents of that plan.
8. §2437 would establish identification requirements for terminal employees, contractors and visitors to the terminal.
9. §2438 would establish access control requirements for terminals.
10. §2439 would establish requirements for key control systems and locking devices.
11. §2440 would establish requirements for perimeter fencing or barriers.
12. §2441 would establish requirements for minimum lighting at terminals.
13. §2442 would establish requirements for warning systems, signals and communications.

14. §2443 would provide for the use of video and electronic surveillance systems or devices to augment or replace manual security systems.
15. §2444 would establish requirements for terminal security training for all terminal employees and security awareness training for all terminal employees, contractors and visitors.
16. §2445 would specify the procedure for approval of the marine terminal physical security plan.

#### **SPECIFIC AGENCY STATUTORY REQUIREMENTS: REVIEW SUBCOMMITTEE ACTION**

Government Code §8574.10, subsection (b) requires that all regulations adopted pursuant to Chapter 7.4 (commencing with Section 8670.1) and Division 7.8 (commencing with Section 8750) of the Public Resources Code shall, prior to adoption, be submitted for review to the Review Subcommittee of the State Interagency Oil Spill Committee. The review subcommittee comprises the Director of Fish and Game, the Executive Officer of the State Lands Commission, the Executive Director of the California Coastal Commission, the State Fire Marshal, the State Oil and Gas Supervisor, the Executive Director of the State Water Resources Control Board and the Executive Director of the San Francisco Bay Conservation and Development Commission or their designees. The text of the proposed regulations has been mailed to those persons for their review and comment. If requested, a formal meeting of the Review Subcommittee will be scheduled.

#### **DIFFERENCES FROM FEDERAL REGULATIONS**

The Commission has determined that the proposed regulations do not duplicate or conflict with Federal regulations. There are no current Federal regulations addressing security at marine oil terminals.

#### **DISCLOSURES REGARDING THE PROPOSED ACTION**

The Commission has made the following determinations:

The Commission has determined that proposed regulations that are the subject of these findings do not impose any mandates on local agencies or school districts.

The Commission has also determined that the proposed regulations do not impose any mandate requiring state reimbursement to any local agency or school district, pursuant to Government Code Sections 17500 *et seq.* No other non-discretionary cost or savings imposed on local agencies is anticipated.

The Commission has determined that no other costs or savings to any other state agencies are anticipated.

The Commission has determined that the proposed regulations will have no significant statewide adverse economic impact on business, including the ability of California businesses to compete with businesses in other states.

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Commission has determined that the proposed regulations will have no significant impact upon any of the following:

- (1) Creation or elimination of jobs within the State of California;
- (2) Creation of new business or the elimination of existing businesses within the State of California; and
- (3) Expansion of businesses currently doing business within the State of California.

The Commission has determined that adoption of these regulations will not affect small businesses. None of the business that will be governed by these proposed regulations can be considered to be a 'small business' as defined in Gov. Code § 11342.610

The Commission has determined that the proposed regulations will have no significant effects on housing costs.

The Commission has determined that the proposed regulations will have no impact on costs or savings in Federal funding to the State.

## **FISCAL IMPACT STATEMENT/FORM 399**

The proposed regulations prescribe new requirements for the items listed below. The commission has determined:

1. Conducting a comprehensive physical security survey

Most terminals in California have completed this task in satisfying the requirements of the emergency security regulations 2 CCR §2351. Immediately following the events of September 11, 2001, Division staff and the United States Coast Guard, together with terminal, conducted spot surveys of all marine oil terminals in California to assess their risk

and the current security arrangements at marine terminals. These surveys take approximately one man-day for a small terminal, two man-days for a medium sized terminal and three man-days for a large terminal. Costs involved approximated \$50 per hour. As this work has already been completed, little or no additional costs are likely to be incurred by terminal operators.

2. Preparing a terminal specific security plan

As a result of the surveys conducted in item 1. above, all the necessary information for preparing a security plan should be available at each terminal. The costs for the preparation of the plan in-house are estimated to be about \$1,000. In the case of a large terminal, if professional consultants were employed, the costs may reach \$80,000. However, it is highly unlikely that professional consultants will be contracted. The larger terminals already have security personnel on staff that have or are capable of preparing security plans. Also, many terminal operators are represented by the Western States Petroleum Association, a professional organization with a technical committee that advises members on the best methods of achieving compliance. Most of these terminals have security arrangements that already meet the requirements of the proposed regulations.

3. Designating a Marine Oil Terminal Security Officer

It is expected that the job of Terminal Security Officer would be assigned to a person who is very familiar with the layout and operation of the terminal and is a current employee there. It is likely that such employee will receive an increase in salary for performing the extra duties. Several larger terminals, which are part of an oil refinery, already have an existing security force with a designated person in charge of security (see item 2. above)

4. Providing normal and additional security personnel

The cost of security guards is approximately \$35,000 per year.

5. Communications system for security

The cost of hand held radios is between \$50 to \$1000 depending on the sophistication of the system. Alternately, mobile cellular telephones may be used. These range from about \$45 to \$120 per telephone. All terminals are required to have means of communications for their operations. Existing means of communications may be extended to cover security arrangements without any additional cost.

6. Protective lighting of access points to the terminal

Most terminals have adequate lighting that satisfies the requirement. There may be a few terminals that would have to provide extra lighting at entry points to the terminal.

7. Fencing, gates or barriers including barbed wire tops

Most terminals have fencing, gates and barriers that meet with these requirements. A few terminals may have to add the barbed or razor wire topping. The cost of fencing is between \$9 and \$14 per linear foot. The cost of gates can range from \$4000 to \$6000 dollars depending on the size of the gate and whether the gates are automated or manually operated.

8. Fixed and mobile security posts

Most terminals have entry control with a security guard post and gate shack. A small number of terminals (4 or 5) do not have this facility. They are located within a port where the port provides entry control. These terminals may be exempted from this requirement if they can demonstrate operational measures that would reduce their risk from terrorist activity.

9. Personnel and vehicle control (passes/badges/photo ID/escort etc.

All large and medium sized terminals have an entry control system. A few small terminals have a small number of permanent employees (less than 15 persons) and do not have identification badges or passes. A computerized digital photo entry control system is available for less than \$4,000. There are other systems available for screening employees, and the price varies with the degree of sophistication of the system. Visitors to a marine terminal without formal procedures in place may be controlled by screening their driver's licenses.

10. Initial and ongoing training

It is estimated that initial training in security awareness for employees would involve approximately 4 hours. This would include a walk around the terminal to familiarize personnel with security arrangements. Ongoing training of 30 minutes duration during mandatory safety meetings would ensure a high standard of security awareness among terminal personnel.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code Section 11346.5, subsection (a)(13), the Commission has determined that there are no reasonable alternatives to the proposed regulations that have otherwise been identified and brought to the

attention of the Commission that would be more effective in carrying out the security measures or would be as effective and less burdensome to affected private persons than the proposed regulations.

The Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the above-mentioned hearings or during the written comment period.

## **CONTACT PERSONS**

Please direct all questions regarding substance of proposed regulations to:

Livin D. Prabhu  
Marine Safety Specialist II  
Planning Branch  
California State Lands Commission  
Marine Facilities Division  
200 Oceangate Suite 900  
Long Beach, CA 90802-4335

Telephone: (562) 499-6312  
Facsimile: (562) 499-6317

Alternate Contact:

Mark A. Meier  
Senior Staff Counsel  
California State Lands Commission  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202

Telephone: (916) 574-1853  
Facsimile: (916) 481-1855

## **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its Long Beach office. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Livin Prabhu at the address or telephone number listed above or by e-mail to "prabhul@slc.ca.gov"



### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

Following the hearing and considering all timely and relevant comments, the Commission may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, shall be made available to the public for at least fifteen days prior to the date on which the Commission adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of Livin D. Prabhu at the address indicated above. The Commission will accept written comments on the modified regulations for fifteen days after the date on which they are made available.

### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon completion, copies of the Final Statement of Reasons may be obtained by contacting Livin D. Prabhu at the above mentioned address.

### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of regulations can be accessed through our website at [http://www.slc.ca.gov/Division\\_Pages/MFD/MFD\\_Home.htm](http://www.slc.ca.gov/Division_Pages/MFD/MFD_Home.htm)